

DO NOT FILE COPY ORIGINAL

July 19, 2007

Chairman Kevin J. Martin
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert M. McDowell
Audio Division Chief Peter Doyle
Deputy Audio Division Chief James Bradshaw
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

FILED/ACCEPTED
AUG - 9 2007
Federal Communications Commission
Office of the Secretary

RE: Recommendations to Ensure a Smooth NCE FM Filing Window

We, the undersigned, are Broadcast Engineers engaged in preparing the technical portions of a number of NCE applications. Collectively, we represent over 80 years of experience in broadcasting. We strongly support and commend the Commission's move to a points-based system to resolve mutual exclusivity. But we're *deeply* concerned that, without safeguards, the upcoming NCE filing window may repeat many of the problems that occurred in the 2003 translator filing window, and will fail to achieve many of the commendable goals for which the new system holds promise.

I. NUMERICAL LIMIT ON APPLICATIONS IS ESSENTIAL

We strongly urge the Commission to limit the number of applications to 10 per applicant, or of any entity having an attributable interest or overlap with another applicant. Major-change applications should be exempt from this limit. Numerical limits are an established procedure that have been imposed without a Rulemaking in the past (e.g. the Translator and LPTV windows of 1992 and 1994.) The advantages of numerical limits are many-fold:

1. Without a limit, a few filers *will* inundate the system with dozens or even hundreds of filings each. This may create large and cumbersome daisy-chained MX groups, a huge burden on FCC staff, and long delays.

Michael D. Brown

BROWN BROADCAST SERVICES
INCORPORATED
3740 S.W. Cornus St. Portland, Oregon 97219-7418

503-245-6065

No. of Copies rec'd 041
List ABCDE

2. Without a limit, the backlog may hamper the Commission's desire to have frequent, regular, and orderly filing windows.

3. Without a limit, the "herd mentality" that has reached a fever pitch, especially in light of the seven-year freeze on new applications, will be even more extreme.

4. Without a limit, the limited number of qualified engineers and communications attorneys will be further stretched. This has already become a serious problem, this year.

5. Without a limit, the number of speculative, poorly-prepared, and "spam" filings will greatly increase.

6. Without a limit, the Commission's goal to give preference to locally-based applicants may be significantly hampered by the sheer number of applicants that may beat them on 307(b)¹, superior coverage, or other matters. Many otherwise-well-qualified local applicants are not able to claim the localism points because they have been established for less than two years.

7. Without a limit, the long delays and domination of the process by a few spammers will erode respect for the process. The Commission has done a good job, in our view, in speeding up processing of several classes of applications. This has increased good will, trust and respect, which would be shredded if the Filing Window were to repeat the events of 2003. Indeed, it might also become a P.R. disaster.

8. Without a limit, the CDBS Electronic Filing System may be overloaded. During the 2003 window, it was taxed well beyond its limits, kicking out applicants repeatedly. The Commission is to be commended for opening the forms for uploading before the window, but we still anticipate *very* heavy traffic during the window.

9. Without a limit, there will be increased pressure on the Commission to limit trafficking in construction permits, which is very difficult and time-consuming to enforce. The Commission is well aware of the large-scale trafficking that has already occurred with the 2003

¹307b: the "fair, efficient and equitable" distribution of service among communities pursuant to Section 307(b) of the Communications Act, 47 U.S.C. Sec 307(b)

translators, by a handful of prolific applicants. To minimize such abuses, it is *much* easier to use the tool of limiting applications at the front-end of the process.

II. THE COMMISSION SHOULD CONSIDER A SHORT DELAY IN THE WINDOW

We believe that a 90 day delay in the filing window, until January 2008, is appropriate and workable.

1. With less than 90 days before the scheduled October window, several key issues have yet to be resolved. One of these is the filing status of existing Low Power FMs. Less than 90 days is simply not enough time to *begin* a strategy for their position in the window. Also, a growing number of these stations are now being displaced or threatened by "move-ins" that have in turn been made possible and/or accelerated by the November 2006 Report and Order allowing most city of license changes as a minor-change.² Some of these established LPFMs are in areas with available NCE channels that might provide continuity of service, but only if they are given sufficient time with known procedures to make their plans.

2. The Commission is to be commended for their pro-active outreach to Indian Tribes. But this process is still gaining momentum, and much work remains to be done. A short delay would be helpful.

²Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services, FCC 06-163, MB Docket 05-210, RM-10960, Released November 29, 2006

III. SPLITTING UP THE WINDOW WOULD BE HELPFUL

While far less important than the filing limits outlined above, we would welcome a splitting of the window into two or more windows, as was done with the LPFM filings. The windows might, for example, split the country geographically into two or three parts, with windows 6 to 12 weeks apart. None of the applications should appear in the CDBS records until the last window is closed. Multiple windows would allow time for applicants, engineers, attorneys, and other consultants to spend more "quality time" preparing better applications. Future NCE windows, with less traffic, would not require splits.

IV. CONCLUSION


We believe that with proper safeguards, the first-ever NCE FM filing window can be a shining model for future successful windows. We submit these suggestions as individuals, and not as official representatives of any group, applicant, or constituency. Thank you very much for helping to grow this vital service.



Michael D. Brown, CSRE
President/Owner - Brown Broadcast Services, Inc.



Andrew L. Brown, BSEE
Engineering Consultant - Brown Broadcast Services
Owner - Multimedia Engineering (Portland, OR)



Michael H. Johnson, CBRE
Engineering Consultant - Brown Broadcast Services
Owner - Mike Johnson, Broadcast Technology